Reg. No. K. 107

KERALA GAZETTE

EXTRAORDINARY

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Contents

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THE KERALA FRUIT NURSERIES BILL, 1963.

Report of the Select Committee.

The Select Committee to which the Kerala Fruit Nurseries Bill, 1963 was referred, have considered the Bill clause by clause and now submit this, their report, with the Bill as reported by the Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 5th November 1963. The Bill was introduced in the Assembly on the 19th February, 1964 and the motion for reference of the Bill to a Select Committee was adopted on the same date.

3. The Committee held two sittings. The changes proposed by the Committee and the reasons therefor are set out in the following paragraphs:—

4. *Clause 2.* (*i*) *Sub-clause* (*a*).—The Committee consider that the competent authority should be the District Agricultural Officer or any other officer appointed by the Government. The Sub-clause has been modified accordingly.

(ii) The Committee feel that the expression 'State' should be defined. New sub-clause (i) is intended for this purpose.

5. *Clause 4. Sub-clause* (*2*) (*c*).—The Committee are of the view that the conditions for the grant of licence, other than those mentioned in the clause, should be specified by the Government in the rules to be made under the Act, instead of empowering the competent authority to notify such conditions. The sub-clause has been suitably recast for this purpose.

6. *Clause 5. Sub-clause* (*1*).—The Committee consider that conditions originally specified as (a) and (d) are unnecessary. Those conditions have accordingly been omitted.

7. *Clause 9. Sub-clause* (*1*).—The Committee think it desirable to specify the appellate authority in the Act itself. Accordingly, the sub-clause has been

modified specifying the Director of Agriculture or any other authority empowered by the Government as the appellate authority.

8. *Clause 14. Sub-clause (1).*—The Committee are of the opinion that the fine of one thousand rupees provided for the contravention of the provisions of the Act or the rules is excessive and should be reduced to five hundred rupees. The sub-clause has been modified accordingly.

9. *Original Clause 15.*—The Committee feel that it is unnecessary to make offences under the Act cognizable. The clause has accordingly been omitted.

10. *Original Clause 19.*—The Committee consider that it is not necessary to provide for the delegation of the powers vested in the Government to any subordinate officer or authority. The clause has therefore been omitted.

11. The other changes made by the Committee are either verbal or consequential.

E. P. POULOSE,
Chairman of the Select Committee.

THE KERALA FRUIT NURSERIES BILL, 1963

(As reported by the Select Committee)

(Words underlined indicate the amendments suggested by the Committee; omissions are indicated by asterisks.)

A

BILL

to provide for the regulation and licensing of fruit nurseries in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide for the regulation and licensing of fruit nurseries in the State of Kerala;

BE it enacted in the Fifteenth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Fruit Nurseries Act, 1964.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "competent authority" in relation to any area means the District Agricultural Officer having jurisdiction in that area and includes any other officer appointed by the Government, by notification in the Gazette, to perform the functions of the competent authority under this Act in such area * * *;

(b) "fruit nursery" means any place where fruit plants are in the regular course of business propagated and sold for transplantation and includes a fruit nursery owned or managed by the Government;

(c) "fruit plant" means any plant which produces edible fruits or nuts, vegetables, or flower plant and includes budwood, seedlings, grafts, seeds and the cuttings of such fruit plants, vegetables and flower plants;

(d) "owner" in relation to a fruit nursery means the person who, or the authority which, has the ultimate control over the affairs of such fruit nursery and, where the said affairs are entrusted to a manager, superintendent, managing director, managing agent or any other person, such manager, superintendent, managing director, managing agent or other person shall be deemed to be the owner;

(e) "person" shall include a company, family, association or other body of individuals whether incorporated or not;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "rootstock" means a fruit plant or part thereof on which any fruit plant has been grafted or budded;

(h) "scion" means a fruit plant which is grafted or budded on to a root-stock;

(i) "State" means the State of Kerala.

3. *Owner to obtain licence.*—No owner shall, after the expiry of six months from the date appointed under sub-section (3) of section 1, conduct or establish a fruit nursery unless he has obtained a licenee under this Act.

Explanation.— Where an owner has more than one fruit nursery in the State, he shall obtain a separate licence in respect of each such fruit nursery.

4. *Application for, and grant and refusal of, licence.*—(1) Every application for a licence under section 3 shall be made to the competent authority and shall be in the prescribed form.

(2) If the competent authority is satisfied that—

(a) the fruit nursery is suitable for the proper propagation of the fruit plant or fruit plants in respect of which the licence has been applied for;

(b) the applicant is competent to conduct or establish such a fruit nursery;

(c) the applicant has fulfilled such other conditions as may be prescribed; and

(d) the applicant has paid the fees prescribed for the licence and has also furnished the prescribed security, if any,

such authority may grant a licence to the applicant for conducting or establishing a fruit nursery in accordanee with the terms of the licence and the provisions of this Act and the rules made thereunder.

(3) Every licenec granted under this section shall be valid for the prescribed period and shall, on application and payment of the prescribed fee, be renewed, from time to time, by the competent authority and for the prescribed period, provided the other conditions mentioned in sub-section (2) continue to be fulfilled.

(4) If the competent authority refuses to grant or renew a licence under this section, it shall record its reasons for such refusal in writing and communicate a copy of its order to the applicant.

5. *Suspension or cancellation of licence.*— (1) The competent authority may suspend or cancel any licence granted or renewed under section 4—

* * * * *

(a) if the licensee has parted, in whole or in part, with his control over the fruit nursery, or

(b) if he has ceased to conduct or possess the fruit nursery, or

* * * * *

(c) if he has contravened, or failed to comply with, any of the terms of the licence or any of the provisions of this Act or the rules made thereunder, or

(d) on any other prescribed ground.

(2) Before passing an order under sub-section (1), the competent authority shall intimate to the licensee the grounds on which it is proposed to take action and give him a reasonable opportunity of showing cause against it.

(3) The competent authority may suspend the licence pending the passing of a final order in respect thereof under sub-section (1).

(4) A copy of every order passed under sub-section (1) or sub-section (3) shall be communicated to the licensee.

6. *Return of licence.*—On the expiry of his licence or on the receipt of an order suspending or cancelling it, the licensee shall return the licence to the competent authority:

Provided that such authority may, after such expiration, suspension or cancellation, give such reasonable time as it thinks fit to the owner to enable him to wind up his fruit nursery.

7. *Duplicate licences.*—If a licence granted to an owner is lost, destroyed, mutilated or damaged, the competent authority shall, on application and payment of the prescribed fee, issue a duplicate licence.

8. *Duties of licensee.*—Every licensee under this Act shall—

(1) undertake to employ only such varieties of the fruit plants as are specified in the licence in respect of scion and rootstock for production or sale;

(2) keep a complete record of the origin or source of every rootstock and every scion showing the local name or botanical name or both, of the rootstock and the scion used;

(3) keep a lay-out plan showing the position of every rootstock and scion employed in raising fruit plants;

(4) keep the nursery plots as well as the parent plants used for the production of the fruit plants free from insect pests and diseases;

(5) specify in a conspicuous manner on a label the name of every kind and variety of fruit plant ** intended for sale and the name of the rootstock together with that of the scion of every such fruit plant;

(6) undertake to release for sale or distribution only such fruit plants as are completely free from any kind of insect pest or disease; and

(7) maintain a register in the form specified by the competent authority showing the name of the fruit plant sold to any person, the name of the rootstock and the name and address of the person purchasing it.

9. *Appeals.*— (1) Any person aggrieved by an order of a competent authority refusing to grant or renew a licence under this Act may appeal, in such form and manner and within such period as may be prescribed, to the Director of Agriculture or any other authority empowered by the Government in this behalf:

Provided that the appellate authority may admit an appeal after the prescribed period, if sufficient cause is shown.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as it thinks fit.

(3) An order passed under this section shall, subject to the provisions of section 10, be final.

10. *Revision.*— (1) The Government may, at any time, for the purpose of satisfying themselves as to the legality or propriety of any order passed under this Act, call for and examine the record of any case and may pass such orders thereon as they think fit;

Provided that the Government shall not exercise the power conferred under this section, in respect of an order against which an appeal preferred under section 9 is pending or, in case an appeal has not been preferred, before the expiry of the time limit therefor.

(2) An order passed under this section shall be final.

11. *Powers of inspection.*—(1) The competent authority or any person authorised by it in this behalf may, at all reasonable hours and with or without assistants, enter any fruit nursery, and inspect or examine the fruit plants therein, and the registers, books of accounts and records relating thereto, for the purpose of satisfying itself or himself that the requirements of this Act and the rules made thereunder are being complied with.

(2) The licensee shall afford the competent authority or the person authorised by it all reasonable access and facilities for such inspection and examination as may be required for the purpose aforesaid and shall be bound to furnish such information relating to the fruit nursery as may be required by such authority or person.

12. *Power to prohibit sale etc.*—(1) The competent authority shall have power—

(a) to take samples of any fruit plant from any fruit nursery;

(b) to send such samples for examination to a laboratory;

(c) to prohibit the sale of any fruit plant when the purity, quality and health of such plant is suspected.

(2) Where any sample is taken under clause (a) of sub-section (1), its cost at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

13. *Power of Government to prohibit or regulate the bringing into or taking out of the State of fruit plants.*—The Government may, by notification in the Gazette, prohibit or regulate, subject to such restrictions and conditions as they may impose, the bringing into, or taking out of the State, otherwise than across a customs frontier * * * * * * or the transport within the State, of any fruit plant * * * * affected by any infectious or contagious disease or pest.

14. *Penalty.*— (1) If any person contravenes any of the provisions of this Act or any rule made thereunder or attempts to contravene or abets the contravention of any such provision, or rule, he shall be punishable with fine which may extend to five hundred rupees.

(2) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (2), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

* * * * * * * * *

15. *Persons exercising powers under this Act to be public servants.*—All persons exercising powers under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

16. *No compensation for suspension or cancellation of licences.*— Where any licence is suspended or cancelled under this Act, the licensee shall not be entitled to any compensation therefor, nor shall he be entitled to the refund of any fee paid by him for the licence.

17. *Protection of persons acting in good faith.*— No suit, prosecution or other legal proceeding shall lie against the Government or against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

* * * * *

18. *Power to make rules.*— (1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the conditions to be inserted in licences to be granted to owners and the form of such licences;

(c) the procedure to be followed by competent authorities in the exercise of their functions under this Act;

(d) the registers, books of accounts and records to be maintained by licensees and the manner in which, and the period for which, they shall be maintained;

(e) the circumstances in which security may be required from licensees and the security furnished by them may be forfeited and the manner in which any sum falling due as a result of such forfeiture may be recovered;

(f) the efficient conduct, improvement and development of fruit nurseries;

(g) the detection, inspection, certification, method of transport or destruction of fruit plants in respect of which a notification has been issued under section 13, or of any articles which may have been in contact or proximity thereto and the regulation of the powers and duties of the officers who may be appointed in this behalf;

(h) the conditions and restrictions regarding the inter-State and intra-State movement and transport of fruit plants.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable under section 14.

(4) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule, or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Legislature Secretariat,
Trivandrum,
26th August 1964.

L. DHARMARAJA IYER,
Secretary,
Legislative Assembly.

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L.A. Bill No. 21 of 1964

NOTIFICATION

No. 4376|LA.7|64.

The following Bill together with the statement of Objects and Reasons, is published under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Legislature Secretariat,
Trivandrum,
26th August 1964.

L. DHARMARAJA IYER,
Secretary,
Legislative Assembly.

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L. A. Bill No. 21 of 1964

THE REVENUE RECOVERY LAWS (AMENDMENT) BILL, 1964.

A

BILL

to amend the Madras Revenue Recovery Act, 1864 as in force in the Malabar area of the State and the Travancore-Cochin Revenue Recovery Act, 1951:

Preamble.—WHEREAS it is expedient to amend the Madras Revenue Recovery Act, 1864, as in force in the Malabar area of the State and the Travancore-Cochin Revenue Recovery Act, 1951, for the purposes hereinafter appearing;

BE it enacted in the Fifteenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Revenue Recovery Laws (Amendment) Act, 1964.

(2) This section shall come into force at once; section 2 shall be deemed to have come into force on the 1st day of November, 1956; and sections 3 and 4 shall be deemed to have come into force on the 22nd day of May, 1951.

2. *Substitution of new section for section 36A of Madras Act, II of 1864.*—For section 36A of the Madras Revenue Recovery Act, 1864 (Act II of 1864), as in force in the Malabar district referred to in subsection (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), the following section shall be substituted, namely:—

"36A. *Postponement of sale and purchase by Government at the subsequent sale.*—(1) When an immovable property is put up for sale at the time and place specified in the notice under the Second clause of section 36 for the recovery of arrears of public revenue due thereon, if there be no bid, or, if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the officer conducting the sale shall postpone

the sale to another date and give notice of the subsequent sale as required by the Second clause of section 36.

(2) When the property is put up for sale on the date to which the sale was postponed under sub-section (1), at the time and place specified in the notice, if there be no bid, the officer conducting the sale may purchase the property on account of the Government for any nominal amount, or, if the highest bid be insufficient to cover the arrears of public revenue due on the property and those subsequently accruing up to the date of sale, such officer may purchase the property on account of the Government at the highest amount of bid; and in either case the Government shall acquire the property subject to the provisions of this Act.

(3) The provisions of the First, Third and Fourth clauses of section 36 shall not apply to cases where immovable property is purchased on account of the Government under this section.".

3. *Insertion of new section 36A in Travancore-Cochin Act, VII of 1951.*—After section 36 of the Travancore-Cochin Revenue Recovery Act, 1951 (Act VII of 1951), hereinafter referred to as the Travancore-Cochin Act, the following section shall be inserted, namely:—

"36A. *Postponement of sale and purchase by Government at the subsequent sale.*—(1) When an immovable property is put up for sale at the time and place specified in clause (2) of section 36 for the recovery of arrears of public revenue due thereon, if there be no bid, or, if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the officer conducting the sale shall postpone the sale to another date and give notice of the subsequent sale as required by clause (2) of section 36.

(2) When the property is put up for sale on the date to which the sale was postponed under sub-section (1), at the time and place specified in the notice, if there be no bid, the officer conducting the sale may purchase the property on account of the Government

for any nominal amount, or, if the highest bid be insufficient to cover the arrears of public revenue due on the property and those subsequently accruing up to the date of sale, such officer may purchase the property on account of the Government at the highest amount of bid; and in either case the Government shall acquire the property subject to the provisions of this Act.

(3) The provisions of clauses (3), (4) and (5) of section 36 shall not apply to cases where immovable property is purchased on account of the Government under this Section.".

4. *Amendment of section 63, Travancore-Cochin Act.*—To section 63 of the Travancore-Cochin Act, the following proviso shall be added, namely:—

> "Provided that nothing in this section shall be deemed to prohibit an officer of the Government from bidding on behalf of the Government.".

5. *Repeal and saving.*—(1) The Revenue Recovery Laws (Amendment) Ordinance, 1964 (Ordinance No. 3 of 1964), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken.

STATEMENT OF OBJECTS AND REASONS

In the judgment reported in A.I.R. 1963 SC. 827, the Supreme Court considered the effect of a purchase on behalf of the Government for a pre-determined nominal amount and observed that such sale cannot be held to bear "sale by public auction" in the absence of any provision for such sales in the statute. Based on the above decision of the Supreme Court, the Kerala High Court, in O.P. No. 916 of 1963, held that a sale for a pre-determined nominal price of 5 nP. was illegal and void. The practice of buying lands by the Government in revenue sales for a nominal value when

the circumstances warrant it, has been in vogue in this State for a very long time. The Travancore-Cochin Revenue Recovery Act, 1951 and the Madras Revenue Recovery Act, 1864, which are in force in this State, do not contain any specific provision for this purpose. Under those Acts, all revenue sales should be by public auction. It was, therefore, considered that the Travancore-Cochin Revenue Recovery Act and the Madras Revenue Recovery Act should be amended so as to enable the Government to purchase properties at nominal values where there are no bidders or at the highest bid where the highest bid offered is insufficient to cover the arrears of public revenue due from the defaulter.

2. As this is a matter affecting the collection of arrears of revenue, it was considered necessary to effect the amendments immediately. Since the Legislative Assembly was not in session, the Governor of Kerala was pleased to promulgate the Revenue Recovery Laws (Amendment) Ordinance, 1964, for the above purpose. The Bill seeks to replace the Ordinance by an Act of the Legislature.

T. A. THOMMAN.